

No. 10983 2407

United States
Circuit Court of Appeals
For the Ninth Circuit.

SUSAN AVERY JONES,

Petitioner,

VS.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the Tax Court
of the United States

FILED

MAR 15 1945

PAUL P. O'BRIEN,

No. 10983

United States
Circuit Court of Appeals
For the Ninth Circuit.

SUSAN AVERY JONES,

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vs.

COMMISSIONER OF INTERNAL REVENUE,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES:

For Taxpayer:

JOHN T. RILEY, Esq.,
DARIUS F. JOHNSON, Esq.

For Comm'r:

BYRON M. COON, Esq.

DOCKET No. 676

MRS. SUSAN AVERY JONES, Amended Title:
Susan Avery Jones, See Order 2/18/43,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1943

Feb. 2—Petition received and filed. Taxpayer notified. Fee paid.

Feb. 2—Copy of petition served on General Counsel.

Feb. 2—Motion for Circuit hearing in Los Angeles, filed by taxpayer. 2/2/43 Granted.

Feb. 18—Motion to amend caption filed by taxpayer.

Feb. 18—Order amending caption to read, Susan Avery Jones, entered.

Feb. 26—Answer filed by General Counsel.

1943

Mar. 3—Copy of answer served on taxpayer.
Los Angeles, California.

1944

Feb. 29—Hearing set April 24, 1944 in Los Angeles,
California.

May 4—Hearing had before Judge Hill on merits.
Briefs due 6/19/44 simultaneously. Re-
plies 7/10/44.

Jun. 10—Transcript of hearing 5/4/44 filed.

Jun. 14—Motion for extension to June 30, 1944
to file respondent's brief, filed by General
Counsel. 6/15/44 Granted.

Jun. 15—Brief filed by taxpayer.

Jun. 28—Brief filed by General Counsel. 6/29/44
Copy served.

Jul. 17—Reply brief filed by taxpayer.

Oct. 10—Memorandum findings of fact and opinion
rendered. Judge Hill. Decision will be
entered for respondent. Copies served.

Oct. 10—Decision entered. Judge Hill. Div. 2.

1945

Jan. 5—Petition for review by U. S. Circuit Court
of Appeals, 9th Circuit, with assignments
of error filed by taxpayer, with proof of
service thereon.

Jan. 5—Praecipe for record filed by taxpayer with
proof of service thereon. [1*]

*Page numbering appearing at top of page of original certified
Transcript of Record.

The Tax Court of the United States

Docket No. 676

MRS. SUSAN AVERY JONES,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, Symbols LA:IT:90D;PB, dated November 10, 1942, and as a basis of his appeal alleges as follows:

(1) The Petitioner is an individual residing in Los Angeles, California, whose address is 13746 Sunset Boulevard, Pacific Palisades, California. The return for the period here involved was filed with the Collector for the Sixth District of California.

(2) The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed to the Petitioner on November 10, 1942.

(3) The taxes in controversy are income taxes for the year 1940 in the amount of \$4,781.48.

(4) The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) In determining net income, Respondent has failed to allow as a deduction loss sustained upon

sale of vacant property in the amount of \$17,560.60.

(5) The facts upon which the Petitioner relies as a basis of this proceeding are as follows: [2]

(a) Petitioner and her husband, Grover Jones, purchased during the year 1928 a piece of unimproved real estate, title being taken in joint tenancy. Petitioner's husband died on September 24, 1940. The original purchase price of this property was \$16,500.00. This property was known as "Tiger Tail." During the month of August, 1930, Petitioner and her husband purchased real estate improved with dwelling that was used as their home, said real estate being situated at 13746 Sunset Boulevard, Pacific Palisades, California. This latter property was used continuously from the time acquired as the home and residence of Petitioner and her husband. The property is still occupied by Petitioner as her home. At the time the unimproved property was acquired in 1928, it was the intention of the Petitioner and her husband to erect their personal dwelling thereon. They abandoned this idea when they acquired the other personal dwelling which they occupied continuously.

In 1930 at the time they acquired their personal dwelling, Petitioner and her husband held the other property for the purpose of selling same at a profit. The property was never improved with a dwelling house; however, Petitioner and her husband did install small pools, sprinkler system, cement walls and fenced the property, planted shrubbery and trees for the purpose of enhancing its value for

facilitating its sale at a profit. They expended not less than \$13,500.00 for improvements of the type mentioned. Petitioner and her husband contemplated building a house upon the property to facilitate its sale and to [3] enable them to realize a greater profit, and shortly prior to the death of Petitioner's husband, they contemplated borrowing sufficient money to accomplish this purpose. Petitioner, during the month of December, 1940, after the death of her husband, sold the property for the sum of \$7,500.00.

(6) Petitioner prays for relief from the deficiency asserted by the Respondent on the following and each of the following particulars:

(a) Petitioner's net income should be recomputed by allowing loss sustained upon sale of vacant real estate.

Wherefore, Petitioner prays that this Board may hear and redetermine the deficiency herein alleged.

JOHN T. RILEY

DARIUS F. JOHNSON

Counsel for Petitioner, 427
Title Insurance Building,
Los Angeles, California. [4]

State of California,
County of Los Angeles—ss.

Mrs. Susan Avery Jones, being duly sworn, says that she is the Petitioner above named; that she has read the foregoing Petition or had the same read to her and is familiar with the statements therein contained; that the facts therein stated are

true except such facts as are recited to be upon information and belief and those facts she believes to be true.

SUSAN AVERY JONES

Subscribed and sworn to before me this 28th day of January, 1943.

[Seal] LYDIA CONRAD

Nearly Public in and for the County of Los Angeles,
State of California.

My Commission expires May 8, 1944. [5]

EXHIBIT "A"

Treasury Department

Internal Revenue Service

Twelfth Floor, U. S. Post Office and Courthouse
Los Angeles, Calif.

Nov. 10, 1942

Office of

Internal Revenue Agent in Charge

Los Angeles Division

LA:IT:90D:PB

Mrs. Susan Avery Jones,
13746 Sunset Boulevard,
Pacific Palisades, California.

Madam:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1940 discloses a deficiency of \$4,-781.48 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the

deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return by permitting an early assessment for the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after the filing of the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner,

By GEORGE D. MARTIN /s/

Internal Revenue Agent in
Charge

Enclosures:

Statement.

Form of waiver. [6]

STATEMENT

LA:IT:90D:PB

Mrs. Susan Avery Jones,
13746 Sunset Boulevard,
Pacific Palisades, California.

Tax Liability for the Taxable Year Ended
December 31, 1940

	Liability	Assessed	Deficiency
Income tax	\$5,469.73	\$ 688.25	\$4,781.48

A copy of this letter and statement has been mailed to your representative, Mr. John T. Riley, 433 South Spring, Los Angeles, California, in accordance with the authority contained in the power of attorney executed by you.

Adjustment to Net Income

Net income as disclosed by return.....\$10,014.50

Additional income and unallowable deductions:

(a) Salary received	\$ 1,000.00	
(b) Taxes disallowed	7.86	
(c) Unemployment insurance disallowed	318.75	
(d) Loss disallowed	17,560.00	18,887.21

Total		\$28,901.71
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Additional deductions:

(e) Advertising expense	\$ 313.75	
(f) Business loss	174.80	488.55

Net income adjusted		\$28,413.16
---------------------------	--	-------------

[7]

Explanation of Adjustments

(a) The one-half of your husband's net income included in your return is understated \$1,000.00 due

to an understatement of \$2,000.00 in the amount of salary received from Universal Pictures Company, Inc.

(b) and (c) In the computation of your husband's net income of which one-half is included in your return, the deductions claimed for taxes and unemployment insurance are excessive in the respective amounts of \$15.72 and \$637.50, and accordingly the amounts of \$7.86 and \$318.75 are added to your income.

(d) In your return you deducted a loss from the sale of property in the amount of \$17,560.60. **This loss is not an allowable deduction** within the meaning of section 23(e)(1) and section 23(e)(2) of the Internal Revenue Code, since it does not appear that this loss results from a transaction entered into for profit, or that it was incurred in trade or business.

(e) In the computation of your husband's net income of which one-half is included in your return, an allowable deduction of \$627.50 for advertising was not claimed, and accordingly your income is reduced \$313.75.

(f) The entire amount of business loss of \$349.71 from Grover Jones Enterprises, as computed in your return, is deductible in your return, whereas only \$174.81 thereof has been claimed as a deduction in your return. Accordingly an additional deduction of \$174.80 is allowed. [8]

Computation of Tax

Net income adjusted		\$28,413.16
Less: Personal exemption	\$ 500.00	
Credit for dependent	300.00	800.00
		<hr/>
Balance (surtax net income).....		\$27,613.16
Less: Earned income credit		1,400.00
		<hr/>
Net income subject to normal tax.....		\$26,213.16
Normal tax at 4% on \$26,213.16.....	\$ 1,048.53	
		<hr/>
Surtax on \$27,613.16	3,923.95	
Total normal tax and surtax	\$ 4,972.48	
Defense tax (10% of \$4,972.48).....		497.25
		<hr/>
Total income tax	\$ 5,469.73	
Correct income tax liability	\$ 5,469.73	
Income tax assessed:		
Original, account No. 208765		688.25
		<hr/>
Deficiency of income tax	\$ 4,781.48	

[Endorsed]: T. C. U. S. Filed Feb. 2, 1943. [9]

[Title of Tax Court and Cause.]

ANSWER

Comes Now the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition of the above-named taxpayer, admits and denies as follows:

(1) and (2) Admits the allegations contained in paragraphs (1) and (2) of the petition.

(3) Admits that the taxes in controversy are

income taxes for the year 1940, but denies the remainder of paragraph (3) of the petition.

(4) Denies the allegations of error contained in paragraph (4) of the petition.

(5) For lack of sufficient information upon the basis of which to form an opinion as to the truth or correctness thereof, the respondent denies the allegations contained in paragraph (5) of the petition. [10]

(6) Denies petitioner is entitled to the relief prayed for in paragraph (6) of the petition.

(7) Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

(Signed) J. P. WENCHEL BHN

Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

ALVA C. BAIRD,
Division Counsel.

B. H. NEBLETT,

B. M. COON,

Special Attorneys, Bureau of
Internal Revenue.

ppw 2-19-43

[Endorsed]: T.C.U.S. Filed Feb. 26, 1943. [11]

[Title of Tax Court and Cause.]

MEMORANDUM FINDINGS OF FACT
AND OPINION

Hill, Judge: This proceeding involves an income tax deficiency for the year 1940 in the sum of \$4,-781.48. Several adjustments to petitioner's income were made by respondent but this proceeding challenges only one. The sole issue is whether respondent erred in refusing to allow as a deduction a loss sustained on the sale of certain real estate. The case was heard upon oral and documentary evidence.

FINDING OF FACTS

Petitioner is an individual residing in Los Angeles, California. She filed her income tax return for 1940 with the collector of internal [12] revenue for the sixth district of California. She is the widow of Grover Jones, a highly successful author and scenario writer, who died in September, 1940.

In 1927 petitioner and her then husband, Grover Jones, entered into a contract for the purchase of certain real estate in Beverly Hills, California, hereinafter referred to as Tiger Tail. The purchase price was \$16,500. Payments were completed in May 1931 and at that time petitioner and her husband received a deed to this property as joint tenants. The lot was irregularly shaped and at the time of purchase, petitioner and her husband were advised by the broker that they would have no difficulty in buying an adjoining lot at a low price, which would fill out the tract to form a rectangular

piece. Petitioner and her husband purchased this property intending to build a home thereon. When the payments were finally completed and the deed received, petitioner's husband commenced negotiations for the so-called corner lot which he felt was needed to complete the tract. The owner of this lot was a non-resident and when his price for the property was made known, Jones decided immediately that he would not pay it, but that he would build his home elsewhere. He asked his real estate broker to list Tiger Tail for sale and very soon thereafter purchased a residence on Sunset Boulevard, and occupied it with petitioner as their home. During the period from June 1931 to 1937 petitioner and her husband purchased additional ground for the Sunset Boulevard home and eventually in 1937 razed the original building and erected a palatial mansion with extensive landscaping, elaborate dog kennels, a swimming pool and other improvements found only in the most expensive [13] homes. The total cost was approximately \$250,000. Its original cost was not in excess of \$27,500.

When the petitioner and her husband purchased the home on Sunset Boulevard they abandoned any intention to build their future home on Tiger Tail. During 1932 and 1933 they spent large sums of money improving it as a residential site, which included installations of a sprinkler system, a driveway, the building of a road along one side of the property, and other extensive improvements, including the planting of trees and shrubs. This was done in an effort to make the property more salable

and to minimize their loss in this connection. No buildings were ever erected and the property never produced any income.

On several occasions Jones was offered \$10,000 for Tiger Tail and each time he refused to accept. He had become so enraged over his inability to acquire the small lot needed to complete Tiger Tail that he refused to sell unless he got his money out of it. On several occasions real estate men discussed with Jones the possibility of trades and exchanges for ranches but nothing ever came of these discussions. After Jones' death in September, 1940 petitioner sold Tiger Tail for \$7,500. The value of Tiger Tail in May or June, 1931, when petitioner and her husband purchased the home on Sunset Boulevard, was \$16,500. The money and effort expended by petitioner and her husband after June 1931 to promote the sale of Tiger Tail do not constitute a transaction entered into for profit.

OPINION

In her income tax return for 1940 petitioner deducted as an ordinary loss the sum of \$17,560.60 as arising out of the sale of Tiger Tail in [14] December 1940 for \$7,500. Respondent, in addition to other adjustments not here material, denied the deduction as not incurred in any transaction entered into for profit within the meaning of section 23 (e)(2) of the Internal Revenue Code. That section reads as follows:

Sec. 23. Deductions From Gross Income.

In computing net income there shall be allowed as deductions:

(e) Losses by Individuals.—In the case of an individual, losses sustained during the taxable year and not compensated for by insurance or otherwise—

(2) if incurred in any transaction entered into for profit, though not connected with the trade or business; * * *

At the trial of this case the parties agreed that the value of the property in May or June 1931 was \$16,500 and that if petitioner is correct in her contention the actual loss amounts to \$9,000.

Petitioner argues that when Tiger Tail was abandoned as a possible future home it became a transaction entered into for profit. She urges that the money spent by her and her husband in improving it together with listing it for sale with brokers demonstrate that it was held for profit within the meaning of this section. Respondent argues that there was no overt act which definitely committed the Joneses to holding it for profit so as to entitle petitioner to the deduction.

It is apparent that the original purchase of Tiger Tail was for the personal benefit of the Joneses who planned to build their home there. [15] Did the abandonment of the property for this purpose, coupled with the extensive improvements and the purchase and occupancy of a residence elsewhere, convert it into a transaction entered into for profit

within the meaning of the above section? We think that it did not.

The cases cited by petitioner in her brief deal in the main with properties which were rented or otherwise devoted to the production of income. *Heiner v. Tindle*, 276 U. S. 582, the leading authority for cases of this type, and other similar cases decided since that decision, all turned on the happening of some event which ended the personal residential character of the property. In the *Tindle* case it was the leasing of the residence that the court singled out as marking the transition. The leasing demonstrated an intent on the part of the owner to convert the property to income purposes. Counsel argue that petitioner should not be penalized for failure to procure income from property where no buildings existed to supply the income. It is not the lack of buildings and rental income therefrom which is responsible for our decision. We do not think that the dealings of petitioner and her husband with *Tiger Tail*, after the purchase of the *Sunset Boulevard* property, amount to a transaction within the meaning of this section. The evidence is uncontradicted that the money spent by petitioner and her husband on *Tiger Tail* was to minimize their loss. Minimizing a loss is not profit. See *Bowers v. Kerbaugh-Empire Co.*, 271 U. S. 170. The *Tiger Tail* transaction was entered into for personal reasons. Nothing petitioner or her husband did in connection therewith caused it to lose this character. Improvements made by petitioner and her husband were

ordinary and customary in landscaping a tract for
[16]

residential use. The sprinkler system, the driveway, the terrace, the shrubbery and trees, all these made the property more desirable from their standpoint as well as prospective purchasers. At any time petitioner and her husband could have erected a home thereon and had the benefits of their expenditures. There is no evidence of any zoning laws which restricted the use of the property. This was a comparatively large tract of land, approximately three-fourths of an acre, and the owners could have conceivably divided it into smaller but still attractively sized building lots, in keeping with the smaller homes erected nearby. No effort was made to rent it for any purpose. The fact that the property was listed for sale with various brokers and that several trades were suggested involving ranch property is not persuasive. The mere listing of residential property with a broker without more is insufficient to transform it into property dealt with for profit within the meaning of section 23 (e)(2). *Morgan v. Commissioner*, 76 Fed. (2d) 390. Some additional act or event in connection with the property is necessary. This can be illustrated by leasing or renting, by remodeling or by any other act which would show a clear cut intention on the part of the owner to change the character of the Property. *Rumsey v. Commissioner*, 82 Fed. (2d) 158. Cert. denied. Nothing in this record convinces us that petitioner has sustained her burden of showing that the deal-

ings with Tiger Tail amounted to a transaction entered into for profit.

Entered:

Decision will be entered for respondent.

[Seal] Entered Oct. 10, 1944. [17]

The Tax Court of The United States
Washington

Docket No. 676

SUSAN AVERY JONES,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered October 10, 1944, it is

Ordered and Decided: That there is a deficiency in income tax of \$4,781.48 for the calendar year 1940.

(Signed) SAM B. HILL,
Judge.

Enter:

Entered Oct. 10, 1944. [18]

[Title of Tax Court and Cause.]

PETITION FOR REVIEW OF DECISION OF
THE TAX COURT OF THE UNITED STATES

To the Honorable The Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

The Petition of Susan Avery Jones respectfully
shows:

I.

This is a proceeding under Paragraph 1141, Title 26 United States Code, for review by the United States Circuit Court of Appeals for the Ninth Circuit of a decision of The Tax Court of the United States, entered October 10, 1944, determining a deficiency in income taxes of the above named Petitioner, for the calendar year 1940, in the amount of \$4,781.48; Petitioner having filed her income tax return for the year 1940, with the Collector of Internal Revenue for the Sixth Collection District of California, said Collection District being within the jurisdiction of the Circuit Court of Appeals for the Ninth Circuit.

II.

STATEMENT OF THE NATURE OF THE
CONTROVERSY

The question presented in this Appeal is whether or not [19] Petitioner may deduct the loss sustained upon the sale of certain real estate in the year 1940.

In 1927, the Petitioner and her husband, Grover Jones, now deceased, entered into a contract for the purchase of certain real estate in Beverly Hills,

California, herein referred to as the "Tiger Tail property". The purchase price was \$16,500.00. Payments were completed in 1931, whereupon Petitioner and her husband received a deed to the property as joint tenants. This property was purchased by the Petitioner and her husband with the intention of erecting a personal residence thereon. The property was irregular in shape and before starting construction of buildings Petitioner and her husband endeavored to purchase certain adjoining land in order to complete the rectangular shape of the property. In May or June of 1931, being unable to acquire the adjoining land at an acceptable price, Petitioner and her husband abandoned the intention of erecting a personal residence thereon and purchased other property which was improved with a residence. During 1932 and 1933, considerable money was spent on the Tiger Tail property which included installation of a sprinkler system, driveway, and other expensive improvements including planting of trees and shrubs, and the property was listed for sale. It was stipulated by the parties hereto, that at the time the residence property was purchased, the Tiger Tail property had a value of \$16,500.00. In 1940, said property was sold for \$7,500.00, resulting in a loss of \$9,000.00.

The Petitioner deducted the sum of \$17,560.60 on her income tax return for the year 1940. The Respondent herein disallowed said loss holding that it did not appear that the loss resulted from a transaction entered into for profit. At the trial of the case it was stipulated that the loss, if determined by the

Court to have been sustained in a transaction entered into for profit, should be allowed in the sum of \$9,000.00. [20]

III.

CONTENTION OF THE PETITIONER

The Petitioner contended before The Tax Court of the United States that the action of the Respondent was erroneous for the reason that when she and her husband purchased another property for their residence, they abandoned the intention of erecting a residence on the Tiger Tail Property; that their expenditure of money improving said Tiger Tail property to make it more salable, and listing it for sale, converted it into a transaction entered into for profit. Petitioner further contended that the loss so sustained was deductible for income tax purposes.

IV.

HOLDING OF THE COURT

The Tax Court of the United States, however, sustained the determination of the Respondent and held that the loss on the sale of the property was not deductible since it did not result from a transaction entered into for profit and that the expenditure of money after the abandonment of the intention of erecting a personal residence thereon, and listing it for sale, did not convert the transaction to a transaction entered into for profit.

V.

DESIGNATION OF COURT OF REVIEW

The Petitioner, being aggrieved by the said decision of The Tax Court of the United States, and having at all times had her residence in the County of Los Angeles, State of California, and having filed her income tax return for the Calendar year 1940 with the Collector of Internal Revenue of the Sixth Collection District of California, desires a review of said decision by The Circuit Court of Appeals for the Ninth Circuit. [21]

VI.

ASSIGNMENT OF ERROR

The Petitioner, as a basis of review, makes the following assignments of error:

First. The Tax Court of the United States erred in determining a deficiency in tax against the Petitioner for the year 1940, in the sum of \$4,781.48.

Second. The Tax Court of the United States erred in determining that the transaction resulting in a loss of \$9,000.00 to the Petitioner was not a loss sustained in a transaction entered into for profit under Section 23 (e) (2) of the Internal Revenue Code.

Third. The Tax Court of the United States erred in that the conclusions of law set forth in its opinion are contrary to and not in harmony with the Court's findings of fact.

Wherefore, your Petitioner prays that the Circuit Court of Appeals for the Ninth Circuit may review

said decision and modify the same in accordance with the Petitioner's contentions.

JOHN T. RILEY and

DARIUS F. JOHNSON

By /s/ JOHN T. RILEY

Counsel for Petitioner, 427
Title Insurance Bldg., Los
Angeles 13, California.

State of California,

County of Los Angeles—ss.

John T. Riley, being first duly sworn, says that he is counsel of record in the above entitled cause; that, as such counsel, he is authorized to verify the foregoing Petition for Review; that he has read the said Petition and is familiar with the statements contained therein; and that the statements made are true to the best of his knowledge, information and belief.

/s/ JOHN T. RILEY [22]

Subscribed and Sworn to before me this 21st day of December, 1944.

[Seal] /s/ LYDIA CONRAD

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires May 8th, 1948.

Personal service of the copy of the within Petition is hereby admitted this 3rd day of January, 1945.

/s/ J. P. WENCHEL, (CAR)

Chief Counsel Bureau of Internal Revenue
Counsel for Respondent

Endorsed]: T.C.U.S. Filed Jan. 5, 1945. [23]

[Title of Tax Court and Cause.]

PRAECIPE FOR RECORD

To the Clerk of the Tax Court of the United States:

You are hereby requested to prepare and certify and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit with reference to Petition for refund heretofore filed by the Petitioner in the above cause, a transcript of the record of the above cause, prepared and transmitted as required by law and by the rules of said court and to include in said transcript of record, the following documents or certified copies, to wit:

(1) The docket entries of all proceedings before The Tax Court of the United States.

(2) Pleadings before The Tax Court of the United States, as follows:

(a) Petition for redetermination including Exhibits.

(b) Answer of the Respondent.

(3) The findings of fact and opinion of The Tax Court of the United States.

(4) The decision of The Tax Court of the United States. [24]

(5) The Petition for Review filed by the Petitioner in the above cause.

(6) This Praecipe.

JOHN T. RILEY and

DARIUS F. JOHNSON

By /s/ JOHN T. RILEY.

Counsel for Petitioner, 427

Title Insurance Bldg.,

Los Angeles 13, California.

Personal service of a copy of the within Praecipe is hereby admitted this 3rd day of January, 1945.

/s/ J. P. WENCHEL, (CAR)

Chief Counsel, Bureau of Internal Revenue Counsel for Respondent

[Endorsed]: T. C. U. S. Filed Jan. 5, 1945.

[25]

[Title of Tax Court and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 25, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 19th day of January, 1945.

[Seal]

B. D. GAMBLE

Clerk, The Tax Court of the United States.

[Endorsed]: No. 10983. United States Circuit Court of Appeals For the Ninth Circuit. Susan Avery Jones, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed February 12, 1945.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 10983

The Tax Court of the United States

No. 676

SUSAN AVERY JONES,

Appellant,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY ON AP-
PEAL AND APPELLANTS DESIGNATION
OF THE MATERIAL PORTIONS OF THE
RECORD ON APPEAL WHICH ARE
THEREFORE TO BE PRINTED

I.

Pursuant to the provisions of Rule 19, subdivision

6 of the Rules of the Circuit Court of Appeals for the Ninth Circuit, Appellant adopts the assignments of error included in the Petition for Review as the points upon which she intends to rely on appeal.

II.

Pursuant to the above Rule, Appellant hereby designates for printing the entire transcript of the proceedings before The Tax Court of the United States.

Dated: February 17, 1945.

JOHN T. RILEY and

DARIUS F. JOHNSON

By DARIUS F. JOHNSON

Counsel for Appellant, 433
South Spring Street, Los
Angeles 13, California

[Endorsed]: Filed Feb. 18, 1945. Paul P.
O'Brien, Clerk.

